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Third Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects
New York, 14-18 July 2008

Discussion paper on illicit brokering in small arms and light weapons

Overview

1. The United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects listed illicit brokering as an aspect to be included in its implementation by States at the national and global levels. Although arms brokering is not an activity *malum per se*, "unregulated and poorly regulated arms brokering activities may result in small arms and light weapons transactions that increase the risk that arms are diverted to conflict-prone areas and embargoed entities, as well as to organized criminal and terrorist groups" (A/62/163, para. 1). Illicit brokering in small arms and light weapons can have a negative impact on such diverse fields as security, stability, conflict resolution, development, crime prevention and humanitarian affairs, and as the latest General Assembly resolution on the subject (62/47) recognized, illicit brokering in small arms and light weapons is "a serious problem that the international community should address urgently". In the Programme of Action, States have made commitments to develop and implement adequate legislation/procedures to regulate arms brokering, as well as cooperate on the issue.

Challenges and opportunities

2. Challenges to the implementation of the Programme of Action brokering provisions are manifold. The majority of States still lack a national legal framework to regulate illicit brokering. Their domestic legislation or administrative procedure often lacks clear and enforceable measures to combat illicit brokering, such as registration, licensing, record-keeping, jurisdiction provisions and penalties. In addition, some States have difficulty in enforcing existing measures and require international assistance to build the necessary capacity. Although the global reach of brokering activities, including "extraterritorial brokering", require international cooperation, such cooperation is not always seamless, even within the same region.

3. On the other hand, States also have unprecedented opportunities to address this issue. Global awareness on the issue of small arms is constantly rising, as shown in

the Secretary-General's report on the issue of small arms in April 2008. Other international organizations, within their mandates, have also taken steps to counter illicit trafficking in arms, including illicit brokering. The reporting process is being improved with the inclusion of a separate section in the national reports on the status of brokering control; many regions or subregions have developed legally binding instruments that regulate the illicit brokering of small arms and light weapons. Most importantly, the General Assembly established the Group of Governmental Experts to further consider steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons, which produced the first report with a definition of illicit brokering.

The way forward

4. The report (A/62/163) contains rich and comprehensive recommendations to address the issue of illicit brokering in small arms and light weapons. The report provides excellent material to enable States to discuss at the biennial meeting the implementation of the commitment made in the Programme of Action to develop legislation/procedures to control brokering. The recommendations made by the Group of Governmental Experts include the following:

- On national implementation: the development of adequate national laws, regulations and administrative procedures; the regulation of activities closely associated with brokering; and the organization of training courses and workshops for national experts and law enforcement officials were recommended. States were also encouraged to report on their efforts to address the issue of illicit brokering, and it was suggested that the Office for Disarmament Affairs include in its website a section that would, among other things, include requests and offers for assistance.

- In the area of international assistance and capacity-building, the report recommended that States and relevant international, regional and subregional organizations seriously consider rendering support to interested States, for example in the form of joint projects for increasing the capacity of relevant authorities. It encouraged States requesting assistance to base such requests on their respective assessments of national needs. States and relevant international, regional and subregional organizations in a position to do so could assist in the formulation of national action plans and related concrete project proposals. Possible cooperation with the World Customs Organization and Interpol was also mentioned.

- In the area of international cooperation on information-sharing, it was noted that requests for cooperation should be made with due respect for the State's constitutional and legal system. States were also encouraged to voluntarily cooperate with other States to facilitate national decision-making and cross-checking procedures. Voluntary cooperation at various other levels, including law enforcement, were also encouraged. The report added that States should take immediate steps to effectively implement and enforce, within their jurisdiction, all arms embargoes and sanctions decided by the Security Council.